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B 49

May 6, 1955.

Attorney General's

George F. Nelson

Transfer of land - Meredith
F 248(5)-F-2019

Stanton C. Otis, Right-of-Way Engineer
Department of Public Works and Highways
State House Annex
Concord, N. H.

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CONCORD, N.H.

Dear Mr. Otis:

You have asked whether it is possible to transfer from the State to The Town of Meredith for park purposes that part of the land which was conveyed by Meredith Linen Mills, Incorporated, to The State of New Hampshire, August 23, 1946, which lies between the Daniel Webster Highway as relocated by Federal Aid Project F 248(5) and the waters of Lake Winnepesaukee.

In that deed by which the State acquired title the land involved was conveyed "subject to a condition which is hereby made a covenant between the Grantor and the Grantee, and said covenant is to run with the land forever, and is as follows: All of the land described above which lies between the proposed new highway and the shore of Lake Winnepesaukee which is not required for highway purposes is to be kept in public ownership for park or recreational purposes and is to be maintained by The State of New Hampshire or The Town of Meredith for such purposes only."

Such transfer would be valid in my opinion and not contrary to the terms of the deed or the public trust if continued to be made available for the general public.

"It has never been deemed essential that the entire community or any considerable part of it should directly enjoy or participate in an improvement or enterprise, in order to constitute a public use, within the true meaning of these words as used in the Constitution. . . . A grant of the public bounty is always subject to the condition or trust that the corporation shall assume an obligation to the State to fulfill the purpose of the grant. . . . Upon transfer, the town will be in fact a public agent exercising powers for the public advantage rather than for its own benefit in its corporate capacity." State v. 4.7 Acres of Land, 95 N.H. 291, 295

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I enclose herewith deed and resolution to cover the matter. Inasmuch as the purposes of the deed are for park or recreational purposes the land outside of the right of way is under the jurisdiction of the Director of Recreation and his recommendation should be the basis of Governor and Council action.

Very truly yours,

George F. Nelson
Assistant Attorney General

GFM:L

Encl.